

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

JOE GARCIA ESTRADA

v.

DOUG DRETKE, ET AL.

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C.A. NO. C-04-687

ORDER DENYING MOTION TO DISQUALIFY THE MAGISTRATE JUDGE

This is a civil rights action filed by a state prisoner pursuant to 42 U.S.C. § 1983.

Pending is plaintiff's motion for disqualification of the magistrate judge. (D.E. 102).

Although it is termed a motion for disqualification of magistrate judge, plaintiff appears to be seeking the recusal of the below signed magistrate judge. (D.E. 102, at 16-20). His complaints against the magistrate appear to be two-fold.


First, he asserts that the magistrate judge lacks jurisdiction to issue orders and memoranda and recommendations in this action. The matters addressed by the magistrate judge in this action have been pursuant to a referral from the district court judge. Accordingly, there is no improper jurisdiction being exercised. See 28 U.S.C. § 636(b)(1).

Second, he indicates that the orders and memoranda and recommendations issued by the magistrate judge in this action are wrongly decided. As the Supreme Court has explained, "judicial rulings alone almost never constitute valid basis for a bias or partiality motion." Liteky v. United States, 510 U.S. 540, 555 (1994); accord United States v. Landerman, 109 F.3d 1053, 1066 (5th Cir. 1997) (quoting Liteky); United States v. MMR Corp., 954 F.2d 1040, 1045 (5th Cir. 1992) ("adverse rulings in a case are not an adequate basis for demanding recusal") (citations omitted). Indeed, "expressions of impatience, annoyance, dissatisfaction, and even

anger, do not establish bias or partiality” and thus recusal is unwarranted. Landerman, 109 F.3d at 1066. Instead, as the Fifth Circuit has indicated, “the judge’s rulings should constitute grounds for appeal, not for recusal.” Id. (citing Liteky, 510 U.S. at 555).

Accordingly, plaintiff’s motion for disqualification of the magistrate judge, (D.E. 102), is hereby DENIED.

ORDERED this 8th day of August 2006.


BRIAN L. OWSLEY
UNITED STATES MAGISTRATE JUDGE